

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

**CLIFF W. DARNELL,
MARY B. DARNELL, and
EMILY J. DARNELL,
Plaintiffs,**

v.

No. 1:21-cv-00125-SCY-JHR

**ZIA TRUST, INC. and
DARRYL W. MILLET,
Defendants.**

RESPONSE TO ORDER TO SHOW CAUSE

Plaintiffs Cliff W. Darnell and Mary B. Darnell, for their Response to the Court's *sua sponte* 2/29/21 Order to Show Cause [Doc. 4], state as follows:

As the Court has pointed out, under 28 U.S.C. § 1332(a)(1) subject-matter jurisdiction requires: (i) complete diversity among the parties; and (ii) that the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. The amount in controversy is not at issue. The Complaint filed in this matter included three plaintiffs, one of whom - Emily Darnell - was listed as a resident of New Mexico.

"The general rule is that federal courts assess subject-matter jurisdiction when a complaint is filed, or at the time of removal to federal court when a case is originally filed in state court. See, e.g., *Pullman Co. v. Jenkins*, 305 U.S. 534, 537 (1939)." *Firebird Structures v. United Broth. of Carpenters*, 252 F.Supp. 3d 1132 (D.N.M. 2017). "A district court may properly exercise jurisdiction based on a jurisdiction-curing event that occurred after filing, but before the entry of final judgment. See *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 73 (1996)." *Id.*

Plaintiff Emily J. Darnell has filed a Notice of Dismissal [Doc. 5], which removes the sole Plaintiff with residency in New Mexico. Complete diversity exists based upon the dismissal

of Emily Darnell's claims. The jurisdictional defect is thus cured and the Court may properly exercise jurisdiction based upon the jurisdiction-curing event. It is in the best interest of Judicial Economy, as well as the remaining Plaintiffs, for the case to continue. Defendants are not prejudiced by dismissal of the claims brought by Emily Darnell.

WHEREFORE, because complete diversity exists, the Court has subject-matter jurisdiction, and Plaintiffs respectfully request the Court not dismiss this action as set forth in the Court's Order to Show Cause.

Respectfully Submitted,
Lakins Law Firm, P.C.



Charles N. Lakins, Esq.
PO Box 91357
Albuquerque, NM 87199
(505) 404-9377

CERTIFICATE OF SERVICE

I, Charles N. Lakins, do hereby certify that on 3/8/2021, this *Response* will be served upon all Parties, contemporaneously with the Summons and Complaint filed in this matter.


Charles N. Lakins, Esq.